

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: 2009SN0288
	)	EEOC NO.: N/A
<b>DENNIS J. MANGOLD,</b>	)	ALS NO.: 09-0449
	)	
Petitioner.	)	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon Dennis Mangold's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>1</sup> of Charge No. 2009SN0288; and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request, and the Respondent's response to the Petitioner's Request; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that:

- (1) The Respondent's dismissal of Count B of the Petitioner's charge is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**; and,
- (2) The Respondent's dismissal of Count A and Count C of the Petitioner's charge is **VACATED**, and Counts A and Count C are **REINSTATED** and **REMANDED** to the Respondent for entry of a finding of **SUBSTANTIAL EVIDENCE** as to both Counts, and for further proceedings in accordance with this Order and the Act.

In support of which determination the Commission states the following findings of fact and reasons:

1. On July 30, 2008, the Petitioner filed a three-count (Counts A- C) charge of discrimination with the Respondent, in which he alleged Caterpillar, Inc. ("Employer") discharged him on February 26, 2008, because of his mental disability, depression (Count A), subjected him to unequal terms and conditions of employment on February 26, 2008, because of his mental disability (Count B), and failed to accommodate his mental disability in February 2008, (Count C), in violation of Section 2-102(A) of the Illinois Human Rights Act (the "Act").
2. On July 23, 2009, the Respondent dismissed all three counts of the charge for lack of substantial evidence. On August 13, 2009, the Petitioner filed a timely Request.

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<sup>1</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

3. The undisputed evidence in the investigation file shows the Petitioner worked for the Employer as a Communications Specialist. In October 2007, the Petitioner was suspended from work for five (5) days, from October 15, 2007, through October 19, 2007. In addition, the Employer required him to go to its Employee Assistance Program ("EAP") before he could return to work.
4. The Petitioner reported to the EAP, which advised him to seek medical help. The Petitioner saw his family doctor, who gave him permission to take medical leave from his employment from October 22, 2007, through November 2, 2007.
5. On October 22, 2007, the Petitioner completed the Employer's Management Disability form. On October 23, 2007, his physician completed the form, indicating that the Petitioner suffered from hypertension, anxiety and depression, and recommending the Petitioner take a leave of absence from work until at least November 5, 2007. Thereafter, the Petitioner submitted the Management Disability Form to his Employer.
6. The Employer placed the Petitioner on authorized medical leave. The Petitioner remained on medical leave until February 20, 2008. On February 20, 2008, his physician released him to return to work at fifty percent for two weeks, at which time an evaluation would be performed to determine if he could return to work full-time. The Petitioner told the Employer that he was released to return to work. The Employer instructed him to report to work on February 26, 2008, with his medical release forms.
7. When the Petitioner reported to work on February 26, 2008, the Employer gave him a performance evaluation that rated his performance as "unacceptable" and informed him that steps were being taken to terminate his employment. The performance evaluation was printed and dated by the Employer's management personnel on November 20, 2007, while the Petitioner was still out on authorized medical leave.
8. Upon being notified of his termination, and pursuant to its Termination Response Process, the Employer told the Petitioner that he would be terminated in 60 days unless he were able to find another position with the Employer within that time period. The Petitioner was not permitted to return to his desk to retrieve his personal property. Instead, he was immediately escorted from the Employer's premises. He was informed that his property would be sent to the Employer's corporate office, where he could recover same. The Employer also revoked the Petitioner's ability to access its computer and e-mail accounts, which rendered the Petitioner unable to view internal job postings at the Employer. Finally, before he was escorted from the premises, the Employer provided the Petitioner with Family and Medical Leave Act ("FMLA") paperwork.
9. In his charge and Request, the Petitioner asserts that there is substantial evidence the Employer subjected him to disability discrimination and to unequal terms and conditions of employment in February 2008.
10. In its Response, the Respondent argues there is no substantial evidence to support Count B of the charge and asks the Commission to sustain its dismissal of Count B.

11. However, the Respondent asks the Commission to vacate its dismissal of Count A and Count C, and enter a finding of substantial evidence as to those Counts. The Respondent argues there is substantial evidence that the Employer's stated reason for terminating the Petitioner was a pretext for discrimination. Further, the Respondent argues there is substantial evidence the Employer failed to reasonably accommodate the Petitioner's mental disability.

The Commission's review of the Respondent's investigation file leads it to conclude the Respondent properly dismissed Count B of the Petitioner's charge for lack of substantial evidence. The Petitioner has not demonstrated that the Respondent's dismissal of Count B was not in accordance with the Act.

When the Petitioner was served with notice of his termination on February 26, 2008, the undisputed evidence in the file shows the Employer followed its Termination Response Policy when it barred his ability to access its computer network, including its internal job postings, and took other measures to promptly remove the Petitioner from its premises. There is absolutely no evidence in the file that similarly situated non-disabled employees were not subjected to the same process by the Employer upon notice of termination. Therefore, there is no substantial evidence to support the allegations of Count B.

However, in its Response to the Petitioner's Request, the Respondent does not oppose the Petitioner's Request as to Count A and Count C. The Respondent asks that the Commission vacate its dismissal of Count A and Count C, enter a finding of substantial evidence as to Count A and Count C, and remand Count A and Count C to the Respondent for further proceedings.

Accordingly, because the Commission finds there is no dispute between the parties, with both parties requesting the Commission vacate the Respondent's dismissal of Counts A and C of the charge and remand Counts A and C for further proceedings, the dismissal of Counts A and C of the charge shall be vacated, and those Counts shall be remanded to the Respondent for further action as herein specified.

**THEREFORE, IT IS HEREBY ORDERED THAT:**

- (1) The Respondent's dismissal of Count A and Count C of the Petitioner's charge is **VACATED**, and Count A and Count C of the charge are **REINSTATED** and **REMANDED** to the Respondent for entry of a finding of **SUBSTANTIAL EVIDENCE** as to those Counts, and for further proceedings, consistent with this Order and the Act; and,
- (2) The Respondent's dismissal of Count B of the Petitioner's charge is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights,

STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION

Page 4 of 4

*In the Matter of the Request for Review by: Dennis J. Mangold*

and Caterpillar, Inc., as appellees, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

<b>STATE OF ILLINOIS</b>	)	
	)	<b>Entered this 24<sup>th</sup> day of February 2010.</b>
<b>HUMAN RIGHTS COMMISSION</b>	)	

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini